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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/801,405

03/16/2004

Robert Senn

PI/5-20835C/D1

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EXAMINER

PRYOR, ALTON NATHANIEL

ART UNIT

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.



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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/801,405
Filing Date: March 16, 2004
Appellant(s): SENN ET AL.

James D. Withers
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 10/12/10 appealing from the Office action mailed 8/26/10.

(1) Real Party in Interest

The examiner has no comment on the statement, or lack of statement, identifying by name the real party in interest in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The following is a list of claims that are rejected and pending in the application:

Claims 17,18,20,24,31,33-43 are rejected and pending.

(4) Status of Amendments After Final

The examiner has no comment on the appellant's statement of the status of amendments after final rejection contained in the brief.

(5) Summary of Claimed Subject Matter

The examiner has no comment on the summary of claimed subject matter contained in the brief.

(6) Grounds of Rejection to be Reviewed on Appeal

The examiner has no comment on the appellant's statement of the grounds of rejection to be reviewed on appeal. Every ground of rejection set forth in the Office action from which the appeal is taken (as modified by any advisory actions) is being maintained by the examiner except for the grounds of rejection (if any) listed under the

subheading "WITHDRAWN REJECTIONS." New grounds of rejection (if any) are provided under the subheading "NEW GROUNDS OF REJECTION."

(7) Claims Appendix

The examiner has no comment on the copy of the appealed claims contained in the Appendix to the appellant's brief.

(8) Evidence Relied Upon

5,852,012 MAIENFISCH ET AL. 12-1998

The Agrochemicals Handbooks, 3rd edition, The Royal Society of Chemistry or Chemistry, 1991, AO891.

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 17,18,20,24,31 and 33-43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mainfisch et al (USPN 5852012; 12/22/98) and The Agrochemical Handbook A0891 / Aug 91. Mainfisch teaches an insecticidal composition comprising compounds 1.2 and 1.4 in Table 1 (see column 20 Table 1) which are equivalent to instant compounds A.1 and A.3. Mainfisch teaches that compositions comprising the

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compounds are made by combining the compounds with auxiliaries and optionally other actives. See column 15 lines 52-58, column 17 lines 50-67. Mainfisch teaches a method of controlling insects comprising applying the compounds to the pests (insects), crop, seed, foliage, and soil. See column 18 lines 12-49, column 13 line 35 – column 15 line 37. Mainfisch does not teach the composition or method comprising abamectin.

However, The Agrochemicals Handbook teaches that abamectin is an insecticide and that abamectin is applied to crops and binds to soils in order to control insects. It would have been obvious to one having ordinary skill in the art to modify the invention taught by Mainfisch to include the abamectin taught by The Agrochemical Handbook. One would have been motivated to do this since each reference has the same utility, i.e. each reference discloses insecticidal inventions and since Mainfisch welcomes the addition of auxiliaries and other actives. It is automatic that Mainfisch's modified method would control insects since like instant invention the same active step of applying the composition to seed and plants is recited.

(10) Response to Argument

Appellants argue there is no motivation to combine the abamectin taught by the Agrochemical Handbook with the thiamethoxam taught by Maienfisch. Appellants argue that it would have not being obvious to specifically pick abamectin from the hundreds of active disclosed in The Agrochemical Handbook and combined it with the thiamethoxam taught by Maienfisch. The Examiner reiterates that It would have been obvious to one having ordinary skill in the art to modify the invention taught by Mainfisch to include the abamectin taught by The Agrochemical Handbook. One would have been motivated to

do this since each reference has the same utility, i.e. each reference discloses insecticidal inventions and since Mainfisch welcomes the addition of auxiliaries and other actives. It is automatic that Mainfisch's modified method would control insects since like instant invention the same active step of applying the composition to seed and plants is recited.

Appellants argue that the Declarations filed June 2, 2008 and February 27, 2009 provides synergistic data for the composition comprising thiamethoxam and abamectin. The Examiner argues that the declarations filed contain mixed results which are additive, synergistic and antagonistic, in Tables 2a, 2b, 2c, 2d and 2e for a combination of abamectin and thiamethoxam. Note, the last entry in Table 2b displays an F/E of 1.00 which is indicative of an additive effect rather than a synergistic effect and the two results directly prior to the final result in Table 2b display an F/E value less than 1:00 which is indicative of an antagonistic effect rather than a synergistic effect. All other results in Table 2b display an F/E value greater than 1:00 which indicates synergism. Table 2c F/E entries 21-26 and the final entry are less than 1.00, indicating antagonism. All other F/E results in Table 2c indicate synergistic (F/E greater than 1.00) or additive (F/E equal 1.00) activity. Table 2d F/E entries 21,22,,24,26-31 and 35 are less than 1.00, indicating antagonism. All other F/E results in Table 2d indicate synergistic or additive activity. Table 2e F/E entries 21,25,27-39 are less than 1.00, indicating antagonism. All other F/E results in Table 2e indicate synergistic or additive activity. The Tables present mixed results within the claimed ratio range of thiamethoxam to abamectin from 10:1 to 1:1. Therefore, the rejection of record has been maintained.

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(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Alton N. Pryor/

Primary Examiner, Art Unit 1616

Conferees:

/Johann R. Richter/

Supervisory Patent Examiner, Art Unit 1616

/Michael G. Hartley/

Supervisory Patent Examiner, Art Unit 1618